

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CAROLYN MITCHELL

Claimant

VS.

WAL-MART

Respondent

AND

AMERICAN HOME ASSURANCE CO.

Insurance Carrier

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Docket No. 264,567

ORDER

Respondent appeals the May 15, 2001, preliminary hearing Order of Administrative Law Judge John D. Clark. In the Order, claimant was awarded temporary partial disability compensation, which respondent contends exceeds the Administrative Law Judge's jurisdiction as K.S.A. 44-510d allows only for temporary total disability compensation when dealing with a scheduled injury.

ISSUES

Did the Administrative Law Judge exceed his authority by ordering temporary partial disability compensation for a scheduled injury under K.S.A. 44-510d(a)?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

For preliminary hearing purposes, the Appeals Board finds the Order of the Administrative Law Judge should be reversed.

K.S.A. 44-510d(a) states:

Where disability, partial in character but permanent in quality, results from the injury, the injured employee shall be entitled to the compensation provided in K.S.A. 44-510h and 44-510i and amendments thereto, but shall not be entitled to any other or further compensation for or during the first

week following the injury unless such disability exists for three consecutive weeks, in which event compensation shall be paid for the first week. Thereafter compensation shall be paid for temporary total loss of use and as provided in the following schedule, 66 $\frac{2}{3}$ % of the average gross weekly wages to be computed as provided in K.S.A. 44-511 and amendments thereto, except that in no case shall the weekly compensation be more than the maximum as provided for in K.S.A. 44-510c and amendments thereto.

The only mention in paragraph (a) deals with claimant's entitlement to temporary total disability compensation during the first week once the criteria is met that the disability would exist for at least three consecutive weeks. There is no mention of temporary partial disability compensation in that section of the statute.

K.S.A. 44-510d(b) states, in part:

. . . and no additional compensation shall be allowable or payable for any temporary or permanent, partial or total disability, except that the director, in proper cases, may allow additional compensation during the actual healing period, following amputation.

The only mention of temporary partial disability compensation in K.S.A. 44-510d excludes same from payment when the injury is limited to a scheduled injury.

The Appeals Board has considered this issue in Ledbetter v. Constar Plastics, WCAB Docket No. 205,252 (October 1996). The Board concluded, in Ledbetter, as temporary partial is not specifically allowed when dealing with scheduled injuries, then the legislature must have intended same to be precluded.

Under K.S.A. 44-510e(a), when dealing with general body disabilities, both temporary and permanent partial disability are discussed. The only explanation for the legislature excluding temporary partial disability compensation from the original section 510d(a) is if it did not intend for claimants who have suffered scheduled injuries to enjoy the benefits of temporary partial disability compensation.

In keeping with its prior holding in Ledbetter, the Appeals Board, therefore, finds the Administrative Law Judge did exceed his jurisdiction in ordering temporary partial disability compensation for a scheduled injury when same is precluded by K.S.A. 44-510d.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated May 15, 2001, should be, and is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of July 2001.

BOARD MEMBER

c: John C. Nodgaard, Wichita, KS
Michael D. Streit, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director